

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CRAIG CUNNINGHAM,

Plaintiff,

v.

MICHAEL MONTES, TOLLFREEZONE.COM, INC.,
MYDATAGUYS.COM, LLC,
PODMUSICGEAR.COM, INC., and
EMAILMYVMAIL.COM, INC.,

Defendants.

ORDER

16-cv-761-jdp

In this Telephone Consumer Protection Act (TCPA) case, the court entered default judgment against defendants in the amount of \$176,450, for which defendants are jointly and severally liable. Dkt. 34 and Dkt. 36. Defendants have appealed this judgment. *See Cunningham v. John & Jane Does*, No. 17-2516 (7th Cir. filed July 25, 2017). The court also froze the defendant businesses' Wells Fargo bank accounts until plaintiff Craig Cunningham has collected the damages awarded. I indicated that defendants could move to release funds upon a showing of necessity. On July 20, 2017, I ordered defendants to show cause as to why I should not order them to deposit the amount of the judgment into the court's registry. Dkt. 39.

In response, defendants state that they do not have sufficient funds to deposit \$176,450 into the court's registry, and they also ask that the court release \$46,950.50 each month (plus a one-time release of \$8,000) from the asset freeze for personal and business expenses. Montes states in an affidavit that his personal expenses amount to \$9,190.50 each month; his monthly business expenses amount to \$37,760. Dkt. 45, ¶¶ 2, 4. As for the \$8,000, he needs that to pay his attorney fees. *Id.* ¶ 5. Montes offered some explanation of

his expenses, but he did not inform the court of his current financial resources or family income. Montes did not even provide current information about his Wells Fargo accounts or the balances available in those accounts.

Based on Montes's statements that he does not have the funds to pay the judgment amount into the court, I will not order that payment now. But Montes did not provide anything close to comprehensive information about his finances, or that of his businesses. (Cunningham has indicated that defendants have other accounts, too, *see* Dkt. 38; we don't know their current balances.) And the fact that he uses the same accounts for both personal and business expenses raises concerns with the legitimacy of his accounting and business practices. I will not lift the freeze on the Wells Fargo accounts, nor will I release any funds from those accounts for personal or business expenses. If defendants want relief from the order freezing their accounts, they will have to make a comprehensive showing of their financial resources.

One last point: I strongly encourage Cunningham to obtain a lawyer's assistance in his efforts to collect on the judgment.

ORDER

IT IS ORDERED that:

1. Defendants' motion for release of frozen funds and response to show cause order, Dkt. 44, is GRANTED in part and DENIED in part, consistent with the opinion above.

2. All Wells Fargo bank accounts in the name of defendants Tollfreezone.com, Inc., PODmusicgear.com, Inc., Mydataguys.com, Inc., and Emailmyvmail.com, Inc., remain frozen. Until further order of the court, defendants are restrained and enjoined from withdrawing, transferring, or otherwise encumbering or disposing of the funds in these accounts.

Entered August 10, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON

District Judge